

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 9, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Tom Day
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri Mount
Richard Mace

OTHERS PRESENT: Dan Gentges, BA08:028, engineer
Robert Reed, BA08:028, attorney
Tom Giordana, BA08:028, communication specialist
Rosemarie Etzel, BA08:033, agent
Melissa & Scott Dooley, BA08:031, owners
Fritz Ruf, BA08:028, BA08:035, BA08:036, Supervisor
Brent Genseke, BA08:036, contractor
Brian Forston, BA08:036, project manager
Jerry Wolf, BA08:035, construction manager
Robyn Schuchardt, County attorney
James Pasterski, BA08:032, petitioner
Greg Pasterski, BA08:032, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of June 25, 2008.*

The motion was seconded by Mr. Bartholomew and carried 4-0. Mr. Ward abstained as he was not present at the June 25, 2008 meeting.

NEW BUSINESS:

BA08:028 ANR PIPELINE COMPANY (OWNER) ATTY. DANIEL W. GENTGES (AGENT):

Mr. Day *I make a motion to postpone our decision until July 23, 2008.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the Ordinance to permit the ANR Pipeline tower at its present elevation exceeding the Airport Height Limits by 107 feet.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

We have no objection to the maintenance of a tower at a conforming height along with its various users on the tower. However, in the interest of the public safety of the airport and its pilots using said facilities, it is inappropriate to recommend that this tower, exceeding the limitation of the airport height ordinance be allowed. While the petitioner does indicate various unique features and circumstances surrounding this tower and its use and the protection of the natural gas pipeline, it is not out of the question that a more appropriate and conforming location for such a communication tower is available and should be utilized so as to not impair or adversely impact the safety of the Waukesha County Airport users. Therefore, the staff cannot find any unique hardship that exists for continuing to allow the existence of this tower in violation of the airport height ordinance.

BA08:035 WAUKESHA MEMORIAL HOSPITAL (OWNER) CG SCHMIDT, INC. (AGENT):

Mr. Schmidt *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following changes to the conditions:*

The conditions shall be presented in the Decision Sheet in a numbered format for clarity. A condition shall also be added which states that the crane must be removed from the property by May 31, 2009 unless extended by Planning & Zoning Division Staff for extenuating circumstances.

The motion was seconded by Mr. Ward and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of this temporary Variance request to operate a construction crane for the construction of the hospital addition. We feel that incorporation of the Airport Commission's recommendation for marking and lighting of the

crane during its use and being lowered below the maximum height elevation of the Airport Ordinance when not in use should be required and provides for adequate notice to airport users and pilots of the existence of the crane. It is also anticipated, according to the petitioner's submittal, that during normal construction hours, the crane operator will be in contact with the Waukesha County Airport tower to ensure that the operation of the crane will not be restricting air flight patterns and to place the airport on notice that the crane is in a operating condition and may exceed the height limitations as noted above.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Accordingly, we recommend said notice be an integral part of the Board's approval and feel that as conditioned herein, the use of this temporary crane for a limited period of time will provide adequate protection to pilots utilizing the airport and will meet the purposes and intent of the Airport Height Limitation Zoning Ordinance to provide safe and adequate operating conditions for users of the County airport. Although this Variance does afford exceedance of the height limitations, the fact that it is a temporary and occasional use during the normal operating hours, along with its operational conditions and information being provided to the airport during its operating hours, we feel that the safety of aircraft users at the airport is not compromised.

BA08:036 RIDGEVIEW OFFICE III, LLC (OWNER) AREA ERECTORS, INC. (AGENT):

Mr. Dwyer

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following changes to the conditions:*

The conditions shall be presented in the Decision Sheet in a numbered format for clarity. A condition shall also be added which states that the crane must be removed from the property by November 1, 2008 unless extended by Planning & Zoning Division Staff for extenuating circumstances.

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of this request for a variance. We feel that the temporary use of this crane for a limited amount of time in a location which is not directly in alignment with either the north-south or the east-west runway, does not result in a significant safety factor as long as the recommended marking and lighting and the lowering of the crane during non-operating hours, as recommended by the Airport Commission, is complied with. Accordingly, the Planning and Zoning Division Staff recommends that those conditions be incorporated into the terms of this Variance request.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

We also recommend that the crane operator be required to be in direct contact with the Airport on a daily basis when the crane is intended to be used to provide information to the airport operator that the crane will be in use on each day. We feel that as conditioned herein, the continued safe use of the Waukesha County Airport will be maintained as long as the conditions are complied with and the safety of aircraft pilots utilizing the airport will not be compromised. We feel that as conditioned the use of this crane will be consistent with the purpose and intent of the Waukesha County Airport Height Limitation Zoning Ordinance and will provide for adequate safety of airport users.

BA08:031 SCOTT AND MELISSA DOOLEY

Mr. Dwyer

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried 4-0. Please note that Mr. Day recused himself from both the hearing and the decision.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the open space requirement of the Ordinance to allow the construction of the additions to the residence on the property subject to the following conditions:

1. The additions must be constructed as proposed.
2. The residence addition shall not exceed 362.5 sq. ft. in size as proposed. The porch shall not exceed 25 sq. ft. in size.
3. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed additions, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the 100-year floodplain elevation of 822.0 amsl of Eagle Springs Lake.
4. The lakeside addition must meet the shore and floodplain setback requirements of the Ordinance.
5. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, structural certification for the addition must be submitted to Planning & Zoning Division staff.

7. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request with the recommended conditions will allow the petitioners to add two small additions to the existing residence that will comply with all of the locational requirements of the Ordinance and will not exceed 50% of the fair market value of the structure. Given the lot size, it is impossible to meet the open space requirements; however, the structure is still within the floor area ratio requirements. As recommended, the approval of this request will only slightly increase the footprint of the structures on the property and is within the purpose and intent of the Ordinance.

BA08:032 GREGORY J. PASTERSKI (OWNER) JAMES A. PASTERSKI (AGENT)

Mr. Bartholomew

I make a motion to den the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried 4-0. Please note that Mr. Day recused himself from both the hearing and the decision.

The Planning and Zoning Division staff's recommendation was for denied the request for a variance from the floodplain setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the event that the accessory building is considered a garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The proposed 624 sq. ft. accessory structure is not necessary for reasonable use of the property. There have already been variances granted for construction of the residence and attached garage which provided the minimum relief necessary from the Ordinance requirements to have a reasonable use of the property. Since reasonable use has already been established on this property, there is no justifiable reason for the granting of either a floodplain setback or boathouse height variance for an accessory structure. Furthermore, this accessory building, if considered a garage, could be constructed in a conforming location without any variances at all. If considered a boathouse, it could be reduced in height and constructed in the proposed location with no variances. It is not necessary to have an 18 ft. tall accessory building in the proposed location to make

reasonable use of the property. As a matter of fact, it is not necessary to have this accessory building at all in order to make reasonable use of this property. The owners already have a 624 sq. ft. attached garage. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. Accessory structures such as this are amenities to a property, but are not necessary for reasonable residential use of any property. Case law has repeatedly held that petitioners are not entitled to the “highest and best use” of a property, but only reasonable use. The owner already has a reasonable use of this property and also has the opportunity to construct a garage or boathouse without the granting of any variances. Furthermore, although the petitioner has indicated that by removing the two existing sheds, there will be a better condition in the future, County staff disagrees. The proposed accessory building will contain almost twice as much impervious surface within the shore setback area than the existing sheds, and therefore will have more negative impacts to the lake than the existing condition. The request does not meet any of the legal standards for the granting of a variance and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA08:033 ST PAUL’S CATHOLIC CHURCH:

Mr. Bartholomew

*I make a motion to **approve** the request, in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **approval** of the requests for variances from the sign requirements and road setback requirements with the following conditions:

1. Subject to the applicant receiving Plan of Operation permit approval from the Town of Genesee and Waukesha County. All conditions therein shall be adhered to as an integral part of this approval.
2. Subject to the applicant receiving a Zoning Permit from the County and a Building Permit from the Town prior to installing the signs.
3. The signs shall be no larger than proposed.
4. The total height of the signs shall not exceed that which has been proposed.
5. The sign at the intersection of C.T.H. “D” and S.T.H. 83 must be located outside of the vision corner.

6. The signs along C.T.H. “D” (as measured from their furthest protrusions) shall be located completely outside of the established 100-ft. road right-of-way unless approval is obtained from the Waukesha County Department of Public Works (WCDPW) to allow the sign within the right-of-way. If WCDPW approval is obtained, a Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff, stating the sign is located within the established road right-of-way and if, in the future, any portion of the sign should interfere with necessary road improvements, the sign must be removed at the owner’s expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed’s Office, and a copy furnished to the Waukesha County Planning and Zoning Division Staff.
7. The signs along S.T.H. 83 must obtain approval from the Wisconsin Department of Transportation if applicable. All conditions therein shall be adhered to as an integral part of this approval.
8. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the three proposed signs in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request as recommended will allow the petitioners to erect the necessary signage to safely direct traffic at its entrances while not infringing on surrounding properties or uses. It will also not impact the public’s safe use of the road as conditioned. It should be noted that the church is located on a residentially zoned property and is surrounded by residential uses. However, the church has been there since 1965 was authorized by a Conditional Use Permit and has recently been granted variances to construct a large addition. It would be unnecessarily burdensome to now deny the church the ability to update the existing signage. It is reasonable to allow larger signs, than would normally be permitted on a residentially zoned property, since this property has been utilized as a church for over 40 years. Signs were not provided for in the most recent Conditional Use Permit amendment. However, there should be some allowance for larger signs so that they can be safely viewed from the highways. The proposed signs are not unreasonably large and are well within the height restrictions outlined in the Ordinance. The approval of this request as recommended will allow the petitioners to replace three existing signs with three new signs that will be safely visible from the highway, while not infringing on surrounding properties or uses. Therefore, approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:30 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment